

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY MARCH 22, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 159**

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**Introduced by Assembly Member Jones**  
**(Principal coauthors: Assembly Members Benoit and Carter)**  
**(Coauthors: Assembly Members Garcia, Levine, and Lieber)**

January 18, 2007

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An act to amend Section 12011.5 of, and to add Sections ~~69110~~,  
~~69614.2~~, 69614.2 and 69615 to, the Government Code, relating to courts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 159, as amended, Jones. Courts: judgeships.

**Existing**

*(1) Existing law requires the Governor to submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for a vacant judicial office for evaluation of their judicial qualifications. Existing law also requires the Governor, on or before March 1, 2007, and annually on or before each March 1 thereafter, to disclose aggregate statewide demographic data provided by all judicial applicants relative to ethnicity and gender.*

*This bill would require the Governor to collect and release, on an aggregate statewide basis, demographic data provided by all judicial applicants relative to ethnicity, race, and gender and demographic data relative to ethnicity, race, and gender of all judicial appointments or nominations as provided by the judicial appointee or nominee.*

(2) *Existing* law specifies the number of judges for the superior court of each county and for each division of each district of the court of appeal.

This bill would authorize ~~50 an unspecified number of~~ additional judges, upon appropriation by the Legislature in the 2007–08 fiscal year, to be allocated to the various county superior courts, pursuant to uniform criteria approved by the Judicial Council. ~~The bill would authorize an unspecified number of additional appellate judges, upon appropriation by the Legislature in the 2007–08 fiscal year.~~

~~This bill would authorize no more than provide that, upon subsequent authorization by the Legislature, 162 subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council, to shall be converted to judgeships, according to specified criteria and upon appropriation by the Legislature, except that no more than 16 positions may be converted to judgeships in any calendar year.~~ The bill would define the term “subordinate judicial officer” for purposes of those provisions and would further declare the Legislature’s intent to restore an appropriate balance between subordinate judicial officers and judges in enacting those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 69110 is added to the Government Code,~~  
2     ~~to read:~~  
3     ~~69110. Upon appropriation by the Legislature in the 2007–08~~  
4     ~~fiscal year, there shall be \_\_\_\_\_ additional appellate judges.~~  
5     ~~SECTION 1. Section 12011.5 of the Government Code is~~  
6     ~~amended to read:~~  
7     ~~12011.5. (a) In the event of a vacancy in a judicial office to~~  
8     ~~be filled by appointment of the Governor, or in the event that a~~  
9     ~~declaration of candidacy is not filed by a judge and the Governor~~  
10    ~~is required under subdivision (d) of Section 16 of Article VI of the~~  
11    ~~Constitution to nominate a candidate, the Governor shall first~~  
12    ~~submit to a designated agency of the State Bar of California the~~  
13    ~~names of all potential appointees or nominees for the judicial office~~  
14    ~~for evaluation of their judicial qualifications.~~  
15    ~~(b) The membership of the designated agency of the State Bar~~  
16    ~~responsible for evaluation of judicial candidates shall consist of~~

1 attorney members and public members with the ratio of public  
2 members to attorney members determined, to the extent practical,  
3 by the ratio established in Sections 6013.4 and 6013.5 of the  
4 Business and Professions Code. It is the intent of this subdivision  
5 that the designated agency of the State Bar responsible for  
6 evaluation of judicial candidates shall be broadly representative  
7 of the ethnic, sexual, and racial diversity of the population of  
8 California and composed in accordance with Sections 11140 and  
9 11141 of the Government Code. The further intent of this  
10 subdivision is to establish a selection process for membership on  
11 the designated agency of the State Bar responsible for evaluation  
12 of judicial candidates under which no member of that agency shall  
13 provide inappropriate, multiple representation for purposes of this  
14 subdivision.

15 (c) Upon receipt from the Governor of the names of candidates  
16 for judicial office and their completed personal data questionnaires,  
17 the State Bar shall employ appropriate confidential procedures to  
18 evaluate and determine the qualifications of each candidate with  
19 regard to his or her ability to discharge the judicial duties of the  
20 office to which the appointment or nomination shall be made.  
21 Within 90 days of submission by the Governor of the name of a  
22 potential appointee for judicial office, the State Bar shall report in  
23 confidence to the Governor its recommendation whether the  
24 candidate is exceptionally well qualified, well qualified, qualified,  
25 or not qualified and the reasons therefor, and may report, in  
26 confidence, other information as the State Bar deems pertinent to  
27 the qualifications of the candidate.

28 (d) In determining the qualifications of a candidate for judicial  
29 office, the State Bar shall consider, among other appropriate  
30 factors, his or her industry, judicial temperament, honesty,  
31 objectivity, community respect, integrity, health, ability, and legal  
32 experience.

33 (e) The State Bar shall establish and promulgate rules and  
34 procedures regarding the investigation of the qualifications of  
35 candidates for judicial office by the designated agency. These rules  
36 and procedures shall establish appropriate, confidential methods  
37 for disclosing to the candidate the subject matter of substantial and  
38 credible adverse allegations received regarding the candidate's  
39 health, physical or mental condition, or moral turpitude which,  
40 unless rebutted, would be determinative of the candidate's

1 unsuitability for judicial office. No provision of this section shall  
2 be construed as requiring that any rule or procedure be adopted  
3 that permits the disclosure to the candidate of information from  
4 which the candidate may infer the source, and no information shall  
5 either be disclosed to the candidate nor be obtainable by any  
6 process that would jeopardize the confidentiality of  
7 communications from persons whose opinion has been sought on  
8 the candidate's qualifications.

9 (f) All communications, written, verbal, or otherwise, of and to  
10 the Governor, the Governor's authorized agents or employees,  
11 including, but not limited to, the Governor's Legal Affairs  
12 Secretary and Appointments Secretary, or of and to the State Bar  
13 in furtherance of the purposes of this section are absolutely  
14 privileged from disclosure and confidential, and any  
15 communication made in the discretion of the Governor or the State  
16 Bar with a candidate or person providing information in furtherance  
17 of the purposes of this section shall not constitute a waiver of the  
18 privilege or a breach of confidentiality.

19 (g) If the Governor has appointed a person to a trial court who  
20 has been found not qualified by the designated agency, the State  
21 Bar may make public this fact after due notice to the appointee of  
22 its intention to do so, but that notice or disclosure shall not  
23 constitute a waiver of privilege or breach of confidentiality with  
24 respect to communications of or to the State Bar concerning the  
25 qualifications of the appointee.

26 (h) If the Governor has nominated or appointed a person to the  
27 Supreme Court or court of appeal in accordance with subdivision  
28 (d) of Section 16 of Article VI of the California Constitution, the  
29 Commission on Judicial Appointments may invite, or the State  
30 Bar's governing board or its designated agency may submit to the  
31 commission its recommendation, and the reasons therefor, but that  
32 disclosure shall not constitute a waiver of privilege or breach of  
33 confidentiality with respect to communications of or to the State  
34 Bar concerning the qualifications of the nominee or appointee.

35 (i) No person or entity shall be liable for any injury caused by  
36 any act or failure to act, be it negligent, intentional, discretionary,  
37 or otherwise, in the furtherance of the purposes of this section,  
38 including, but not limited to, providing or receiving any  
39 information, making any recommendations, and giving any reasons  
40 therefor. As used in this section, the term "State Bar" means its

governing board and members thereof, the designated agency of the State Bar and members thereof, and employees and agents of the State Bar.

(j) At any time prior to the receipt of the report from the State Bar specified in subdivision (c) the Governor may withdraw the name of any person submitted to the State Bar for evaluation pursuant to this section.

(k) No candidate for judicial office may be appointed until the State Bar has reported to the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate's name to the State Bar, whichever occurs earlier. The requirement of this subdivision shall not apply to any vacancy in judicial office occurring within the 90 days preceding the expiration of the Governor's term of office, provided, however, that with respect to those vacancies and with respect to nominations pursuant to subdivision (d) of Section 16 of Article VI of the California Constitution, the Governor shall be required to submit any candidate's name to the State Bar in order to provide it an opportunity, if time permits, to make an evaluation.

(l) Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to judicial office, nor shall anything in this section be construed as adding any additional qualifications for the office of a judge.

(m) The Board of Governors of the State Bar shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature, except an evaluation, review, or report on potential judicial appointees or nominees as authorized by this section.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in an evaluation, review, or report in his or her individual capacity.

(n) (1) Notwithstanding any other provision of this section, on or before March 1, 2007, and on or before March 1 of each year thereafter, all of the following shall occur:

1 (A) The Governor shall ~~disclose aggregate statewide~~  
2 ~~demographic~~ *collect and release, on an aggregate statewide basis,*  
3 *both of the following:*

4 (i) *Demographic data provided by all judicial applicants relative*  
5 *to ethnicity, race, and gender.*

6 (ii) *Demographic data relative to ethnicity, race, and gender*  
7 *of all judicial appointments or nominations as provided by the*  
8 *judicial appointee or nominee.*

9 (B) The designated agency of the State Bar responsible for  
10 evaluation of judicial candidates shall collect and release both of  
11 the following on a aggregate statewide basis:

12 (i) Statewide demographic data provided by judicial applicants  
13 reviewed relative to ethnicity, *race*, and gender.

14 (ii) The statewide summary of the recommendations of the  
15 designated agency of the State Bar by ethnicity, *race*, and gender.

16 (C) The Administrative Office of the Courts shall collect and  
17 release the demographic data provided by justices and judges  
18 described in Article VI of the California Constitution relative to  
19 ethnicity, *race*, and gender, by specific jurisdiction.

20 (2) Any demographic data disclosed or released pursuant to  
21 this subdivision shall disclose only aggregated statistical data and  
22 shall not identify any individual applicant, justice, or judge.

23 (o) If any provision of this section other than a provision relating  
24 to or providing for confidentiality or privilege from disclosure of  
25 any communication or matter, or the application of the provision  
26 to any person or circumstances, is held invalid, the remainder of  
27 this section to the extent it can be given effect, or the application  
28 of the provision to persons or circumstances other than those as  
29 to which it is held invalid, shall not be affected thereby, and to this  
30 extent the provisions of this section are severable. If any other act  
31 of the Legislature conflicts with the provisions of this section, this  
32 section shall prevail.

33 SEC. 2. Section 69614.2 is added to the Government Code, to  
34 read:

35 69614.2. Upon appropriation by the Legislature in the 2007–08  
36 fiscal year, there shall be ~~50~~ \_\_\_\_ additional judges allocated to  
37 the various county superior courts, pursuant to the uniform criteria  
38 described in subdivision (b) of Section 69614, as updated and  
39 approved by the Judicial Council on February 23, 2007.

1 SEC. 3. Section 69615 is added to the Government Code, to  
2 read:

3 69615. (a) It is the intent of the Legislature in enacting this  
4 section to restore an appropriate balance between subordinate  
5 judicial officers and judges in the trial courts by providing for the  
6 conversion, as needed, of subordinate judicial officer positions to  
7 judgeships in courts that assign subordinate judicial officers to act  
8 as temporary judges. The Legislature finds that these positions  
9 must be converted to judgeships in order to ensure that critical  
10 case types, including family, probate, and juvenile law matters can  
11 be heard by judges.

12 (b) (1) ~~Upon appropriation~~ *subsequent authorization* by the  
13 Legislature, ~~no more than~~ 162 subordinate judicial officer positions  
14 in eligible superior courts, as determined by the Judicial Council  
15 pursuant to uniform criteria for determining the need for converting  
16 existing subordinate judicial officer positions to superior court  
17 judgeships, shall be converted to judgeships as set forth in  
18 paragraph (2), *except that no more than 16 subordinate judicial*  
19 *officer positions may be converted in any calendar year.*

20 (2) A subordinate judicial officer position shall be converted to  
21 a judicial position when a vacancy occurs in any subordinate  
22 judicial officer position in an eligible superior court and the Judicial  
23 Council files notice of the vacancy with the Secretary of State.

24 (3) The provisions of Section 12011.5 of the Government Code  
25 shall apply to any appointment to a superior court judgeship  
26 converted from a subordinate judicial officer position.

27 (c) For purposes of this section, “subordinate judicial officer”  
28 means an officer appointed under the authority of Section 22 of  
29 Article VI of the California Constitution. This section shall not  
30 apply to a subordinate judicial officer established by Section 4251  
31 of the Family Code.

32 (d) It is the intent of the Legislature that no subordinate judicial  
33 officer shall involuntarily lose his or her position solely due to  
34 operation of this section. This section does not change the  
35 employment relationship between subordinate judicial officers and  
36 the trial courts established by law.

37 (e) This section does not limit the authority of the Governor to  
38 appoint a person to fill a vacancy pursuant to subdivision (c) of  
39 Section 16 of Article VI of the California Constitution.

40 (f) This section does not entitle a court to an increase in funding.

1 (g) The operation of this section shall neither increase nor  
2 decrease the number of judicial and subordinate judicial officer  
3 positions and court support positions for which a county is  
4 responsible by law.

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